

SUPPORTING STATEMENT
Rule 7d-1

A. JUSTIFICATION

1. Necessity for the Information Collection

Section 7(d) of the Investment Company Act of 1940 (15 U.S.C. 80a-7(d)) (the “Act” or “Investment Company Act”) requires an investment company (“fund”) organized outside the United States (“foreign fund”) to obtain an order from the Commission allowing the fund to register under the Act before making a public offering of its securities through the United States mail or any means of interstate commerce. The Commission may issue an order only if it finds that it is both legally and practically feasible effectively to enforce the provisions of the Act against the foreign fund, and that the registration of the fund is consistent with the public interest and protection of investors.

Rule 7d-1 (17 CFR 270.7d-1) under the Act, which was adopted in 1954, specifies the conditions under which a Canadian management investment company (“Canadian fund”) may request an order from the Commission permitting it to register under the Act. Although rule 7d-1 by its terms applies only to Canadian funds, funds in other jurisdictions generally have agreed to comply with the requirements of rule 7d-1 as a prerequisite to receiving an order permitting the fund’s registration under the Act.

The rule requires Canadian funds that propose to register under the Act to file an application with the Commission that contains various undertakings and agreements by the fund. The requirement of the Canadian fund to file an application is a collection of information under the Paperwork Reduction Act. Certain of the undertakings and agreements, in turn, impose the following additional information collection requirements:

- (1) the fund must file with the Commission agreements between the fund and its directors, officers, and service providers requiring them to comply with the fund's charter and bylaws, the Act, and certain other obligations relating to the undertakings and agreements in the application;
- (2) the fund and each of its directors, officers, and investment advisers that is not a U.S. resident, must file with the Commission an irrevocable designation of the fund's custodian in the United States as agent for service of process;
- (3) the fund's charter and bylaws must provide that (a) the fund will comply with certain provisions of the Act applicable to all funds, (b) the fund will maintain originals or copies of its books and records in the United States, and (c) the fund's contracts with its custodian, investment adviser, and principal underwriter, will contain certain terms, including a requirement that the adviser maintain originals or copies of pertinent records in the United States;
- (4) the fund's contracts with service providers will require that the provider perform the contract in accordance with the Act, the Securities Act of 1933 (15 U.S.C. 77a), and the Securities Exchange Act of 1934 (15 U.S.C. 78a), as applicable; and
- (5) the fund must file, and periodically revise, a list of persons affiliated with the fund or its adviser or underwriter.

As noted above, under section 7(d) of the Act, the Commission may issue an order permitting a foreign fund's registration only if the Commission finds that "by reason of special circumstances or arrangements, it is both legally and practically feasible effectively to enforce the provisions of the (Act)." The information collection requirements are necessary to assure that the substantive provisions of the Act may be enforced as a matter of contract right in the United States or Canada by the fund's shareholders or by the Commission.

Rule 7d-1 also contains certain information collection requirements that are associated with other provisions of the Act. These requirements are applicable to all registered funds and are outside the scope of this Supporting Statement.

2. Purposes of the Information Collection

The collection of information requirements (as well as other requirements) of rule 7d-1 are designed to assure that appropriate arrangements are in place to confirm the enforceability of the Act against the Canadian fund. Under international law, for example, it is uncertain whether the Commission or a fund's shareholders could enforce the Act's provisions against the Canadian fund and associated persons (that is, those persons in addition to the fund, such as the Canadian fund's service providers, that must meet the requirements of rule 7d-1) solely on the basis of the Canadian fund's registration under the Act. Thus, rule 7d-1 requires foreign funds to file an application containing certain undertakings and agreements that confirm that the Commission and the fund's shareholders will be able to enforce the provisions of the Act as a matter of contract right in the United States or Canada. The application itself allows Commission staff to determine whether to permit the applicant to register under the Act.

In addition, the rule's requirement to maintain records in the United States (which, without the requirement, might be maintained in Canada or another foreign jurisdiction) facilitates routine inspections and any special investigations of the fund by Commission staff. The requirement to update the list of affiliated persons also assists the staff in monitoring the fund's relationships with affiliates.

3. Role of Improved Information Technology

Rule 31a-2(f) under the Investment Company Act permits funds to maintain many types of records (and produce them for the Commission's examination as necessary) on micrographic media, including microfilm, microfiche, or similar medium, or any electronic storage media, including any digital storage medium or system. Canadian

funds and their advisers generally may keep records in the United States as required by rule 7d-1 in these forms.

The Commission's Electronic Data Gathering, Analysis, and Retrieval system ("EDGAR") is designed to automate the filing, processing, and dissemination of full disclosure filings. The system permits publicly held companies to transmit many filings to the Commission electronically, including applications for orders under the Investment Company Act, such as those submitted by Canadian or other foreign funds. EDGAR may also be used in the future to obtain other types of information from sources outside the Commission, such as updates of lists of affiliated persons, as required by rule 7d-1.

4. Efforts to Identify Duplication

The requirement under rule 7d-1 to maintain original or duplicate books and records in the United States is intended to assure that the provisions of the Act can be enforced against a Canadian (or foreign) fund. Without the requirement, records could be maintained only in Canada. The Commission's ability to examine those records would depend upon Canadian law. The inconvenience and expense of travel to Canada also could adversely affect enforcement of the Act.

5. Effect on Small Entities

The Commission does not believe that compliance with rule 7d-1 is unduly burdensome for large or small entities. The information collection requirements of the rule apply to all Canadian funds that seek the benefit of registration under the Act, whether or not they are small entities. The requirements establish the enforceability of the Act for all funds regardless of size, and in so doing, enable the Commission to fulfill its statutory mandate.

6. Consequences of Less Frequent Collection

Rule 7d-1's requirement that Canadian funds file an application that contains certain undertakings and agreements as a prerequisite to the fund's registration under the Act is not a recurring obligation. The rule also imposes requirements to maintain records in the United States, and to update certain fund agreements, designations of the fund's custodian as service agent, and lists of affiliated persons as changes occur. Without the rule's information collection requirements, the Commission could not determine whether the substantive provisions of the Act would be enforceable as a matter of contract right in the United States by the fund's shareholders or by the Commission.

On occasion, after a Canadian (or other foreign fund) has registered, it may file a supplemental application seeking special exemptive relief from provisions of the Act based on the fund's particular circumstances. Rule 7d-1 does not mandate these applications, which are submitted at a fund's discretion.

7. Inconsistencies with Guidelines in 5 CFR 1320.5(d)(2)

By requiring funds to maintain records in the United States, rule 7d-1 effectively requires the fund to preserve these records either permanently or for six years after pertinent transactions, depending on the record. This requirement applies to the records of all registered funds, including any records maintained in Canada.¹

The Commission believes that the long-term retention of records in the United States is necessary to carry out its examination and enforcement responsibilities, and its mandate to ensure that the Act's provisions are legally enforceable. The Commission periodically inspects the operations of registered funds to ensure compliance with the rules and regulations under the Act; however, each fund may be inspected only at

¹ 17 CFR 270.7d-1(b)(8)(iii).

intervals of several years due to limits on the Commission's resources. Furthermore, Congress has placed no time limit on the prosecution of persons engaged in certain types of conduct that violate the securities laws. For these reasons, the Commission often needs information relating to events or transactions that occurred years ago. In section 31(a) of the Act (15 U.S.C. 80a-30(a)), Congress specifically authorized the Commission to require funds to "maintain and preserve" books and records "for such period or periods as the Commission, by rules and regulations, may prescribe as necessary or appropriate in the public interest or for the protection of investors." Computerized record storage has made long-term retention of records less burdensome.

8. Consultation Outside the Agency

The Commission proposed rule 7d-1 for public comment before it was adopted on April 27, 1954. The requirements of the rule were formulated after extended discussions with Canadian funds that had applied for orders permitting registration before the rule was adopted. The Commission considered all comments and suggestions and determined to adopt the rule's information collection requirements substantially as proposed. Subsequent amendments have not significantly altered the rule's information collection requirements. The Commission requested public comment on the collection of information requirements in rule 7d-1 before it submitted this request for extension and approval to the Office of Management and Budget. The Commission received no comments.

9. Payment or Gift to Respondents

Not applicable.

10. Assurance of Confidentiality

Not applicable.

11. Sensitive Questions

Not applicable.

12. Estimate of Hour Burden

The Commission believes that one foreign fund is registered under the Act pursuant to rule 7d-1 and currently active. The burden hours under the rule associated with the fund's compliance with the Act's requirements are reflected in the information collection burdens applicable to those requirements for all registered funds.

Apart from requirements under the Act applicable to all registered funds, rule 7d-1 imposes ongoing burdens to maintain records in the United States, and to update, as necessary, certain fund agreements, designations of the fund's custodian as service agent, and the fund's list of affiliated persons. The Commission staff estimates that each year under the rule, the active registrant and its directors, officers, and service providers engage in the following collections of information and associated burden hours:

- For the fund and its investment adviser to maintain records in the United States:²
0 hours: 0 minutes of compliance clerk time.
- For the fund to update its list of affiliated persons:
2 hours: 2 hours of support staff time.

² The rule requires an applicant and its investment adviser to maintain records in the United States (which, without the requirement, might be maintained in Canada or another foreign jurisdiction), which facilitates routine inspections and any special investigations of the fund by Commission staff. The registrant and its investment adviser, however, already maintain the registrant's records in the United States and in no other jurisdiction. Therefore, maintenance of the registrant's records in the United States does not impose an additional burden beyond that imposed by other provisions of the Act. Those provisions are applicable to all registered funds and the compliance burden of those provisions is outside the scope of this Supporting Statement.

- For new officers, directors, and service providers to enter into and file agreements requiring them to comply with the fund's charter and bylaws, the Act, and certain other obligations:
 - 0.5 hours: 7.5 minutes of director time;
2.5 minutes of officer time;
20 minutes of support staff time.
- For new officers, directors, and investment advisers who are not residents of the United States to file irrevocable designation of the fund's custodian as agent for process of service:
 - 0.25 hours: 5 minutes of director time;
10 minutes of support staff time.

Based on the estimates above, the Commission estimates that the total annual burden of the rule's paperwork requirements is 2.75 hours.³ We estimate that directors perform 0.21 hours of these burden hours at a total cost of \$945,⁴ officers perform 0.04 of these burden hours at a total cost of \$17.32,⁵ and support staff perform 2.5 of these burden hours at a total cost of \$150.⁶ Thus, the Commission estimates the aggregate annual cost of these burden hours associated with rule 7d-1 is \$1112.32.⁷

³ This estimate is based on the following calculation: $(0 + 2 + 0.5 + 0.25) = 2.75$ hours.

⁴ The director estimates are based on the following calculations: $(7.5 \text{ minutes} + 5 \text{ minutes}) / 60 \text{ minutes per hour} = 0.21 \text{ hours}$; and $0.21 \text{ hours} \times \$4500 \text{ per hour} = \945 . The per hour cost estimate is based on estimated hourly compensation for each board member of \$500 and an average board size of 9 members.

⁵ The officer estimates are based on the following calculations: $2.5 \text{ minutes} / 60 \text{ minutes per hour} = 0.04 \text{ hours}$; $0.04 \text{ hours} \times \$433 \text{ per hour} = \$17.32$. The per hour cost estimate, as well as other internal time cost estimates for management and professional earnings, is based on the figure for chief compliance officers found in SIFMA's Management & Professional Earnings in the Securities Industry 2011, modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

⁶ The support staff estimates are based on the following calculations: $2 \text{ hours} + 20 \text{ minutes} + 10 \text{ minutes} = 2.5 \text{ hours}$; and $2.5 \text{ hours} \times \$60 \text{ per hour} = \$150$. The per hour cost estimate, as well as other internal time cost estimates for office salaries, is based on the figure for compliance clerks found in SIFMA's Office Salaries in the Securities Industry 2011, modified by Commission staff to account for an 1800-hour work-year and multiplied by 2.93 to account for bonuses, firm size, employee benefits and overhead.

⁷ This estimate is based on the following calculation: $\$1112.32 = \$945 + \$17.32 + \150 .

If a fund were to file an application under rule 7d-1 to register under the Act, the Commission estimates that the rule would impose initial information collection burdens (for filing an application, preparing the specified charter, bylaw, and contract provisions, designations of agents for service of process, and an initial list of affiliated persons, and establishing a means of keeping records in the United States) of approximately 90 hours for the fund and its associated persons. The Commission is not including these hours in its calculation of the annual burden because no fund has applied to register under the Act pursuant to rule 7d-1 in the last three years.

As noted above, after registration, a Canadian fund may file a supplemental application seeking special relief designed for the fund's particular circumstances. Rule 7d-1 does not mandate these applications. The active registrant filed a substantive supplemental application in 2011. The Commission staff estimates that the rule would impose an additional information collection burden of 5 hours on a fund to comply with the Commission's application process at a cost of \$5957.⁸ The staff understands that funds also obtain assistance from outside counsel to comply with the Commission's application process and the cost burden of using outside counsel is discussed in Item 13 below.

Therefore, the Commission staff estimates the aggregate annual burden hours of the collection of information associated with rule 7d-1 is 7.75 hours, at a cost of

⁸ The staff estimates that, on average, the fund's investment adviser spends approximately 4 hours to review an application, including 3.5 hours by an assistant general counsel at a cost of \$407 per hour, 0.5 hours by an administrative assistant, at a cost of \$65 per hour, and the fund's board of directors spends an additional 1 hour at a cost of \$4500 per hour for a total of 5 hours, at a total cost of \$5957. This estimate is based on the following calculation: (3.5 hours x \$407 per hour) + (0.5 hours x \$65 per hour) + (1 hour x \$4500 per hour) = \$5957.

\$7069.32.⁹ These estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of Commission rules.

13. Estimate of Total Annual Cost Burden

If a Canadian or other foreign fund in the future applied to register under the Act under rule 7d-1, the fund initially might have capital and start-up costs (not including hourly burdens) of an estimated \$17,280 to comply with the rule's initial information collection requirements. These costs include legal and processing-related fees for preparing the required documentation (such as the application, charter, bylaw, and contract provisions, designations for service of process, and the list of affiliated persons). Other related costs would include fees for establishing arrangements with a custodian or other agent for maintaining records in the United States, copying and transportation costs for records, and the costs of purchasing or leasing computer equipment, software, or other record storage equipment for records maintained in electronic or photographic form.

The Commission expects that the fund and its sponsors would incur these costs immediately, and that the annualized cost of the expenditures would be \$17,280 in the first year. Some expenditures might involve capital improvements, such as computer equipment, having expected useful lives for which annualized figures beyond the first year would be meaningful. These annualized figures are not provided, however, because, in most cases, the expenses would be incurred immediately rather than on an annual basis. The Commission is not including these costs in its calculation of the annualized

⁹ These estimates are based on the following calculations: $2.75 + 5 = 7.75$ hours;
 $\$1112.32 + \$5957 = \$7069.32$.

capital/start-up costs because no fund has applied under rule 7d-1 to register under the Act in the last three years.

As indicated above, a Canadian or foreign fund may file a supplemental application seeking special relief designed for the fund's particular circumstances. Rule 7d-1 does not mandate these applications. The active registrant filed a substantive supplemental application in 2011. As noted above, the staff understands that funds generally use outside counsel to prepare the application. The staff estimates that outside counsel spends 10 hours preparing a supplemental application, including 8 hours by an associate and 2 hours by a partner. Outside counsel billing arrangements and rates vary based on numerous factors, but the staff has estimated the average cost of outside counsel as \$400 per hour, based on information received from funds, intermediaries and their counsel. The Commission staff therefore estimates that the fund would obtain assistance from outside counsel at a cost of \$4000.¹⁰

These estimates of average costs are made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules.

14. Estimate of Cost to the Federal Government

Rule 7d-1 has imposed minimal costs on the federal government for reviewing the small number of applications and supporting documents filed with the Commission under the rule since 1954. No new fund has applied under rule 7d-1 to register under the Act in the last three years. The Commission received one supplemental application from an existing registrant. The Commission staff in the Office of Investment Company Regulation in the Division of Investment Management processes these and other

¹⁰ This estimate is based on the following calculation: 10 hours x \$400 per hour = \$4000.

exemptive applications. The annual cost of reviewing and processing all applications under the Investment Company Act for orders from the Commission for exemptive relief amounted to approximately \$9.6 million in fiscal year 2011, based on the Commission's computation for the value of staff time devoted to these activities and related overhead. The Commission receives occasional reports updating lists of affiliated persons as required by the rule.

15. Explanation of Changes in Burden

The estimated number of 7.75 burden hours reflects an increase of 5 hours from the current allocation. This increase results from adding the burden hours for preparation of a supplemental application filed under rule 7d-1 because the current registrant filed such an application over the past three years.

The estimated cost burden has increased from \$0 to \$4000, an increase of \$4000. The increase results from adding the cost burden for preparation of a supplemental application filed under rule 7d-1 because the current registrant filed such an application over the past three years.

16. Information Collection Planned for Statistical Purposes

Not applicable.

17. Approval to not Display Expiration Date

Not applicable.

18. Exceptions to Certification Statement

Not applicable.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable.